

The Economic Growth, Regulatory Relief and Consumer Protection Act (“Regulatory Relief Act”) reinstated consumer protections related to tenants and servicemembers of which lenders and creditors should be aware.

The Protecting Tenants at Foreclosure Act of 2009¹ (“PTFA”) was restored on June 23, 2018. It applies in all states, and to judicial and nonjudicial foreclosures. The purpose of the PTFA is to provide tenants facing eviction from a foreclosed property with a period of time to find alternative housing. It prohibits the immediate eviction of a tenant by a successor in interest (“owner”) after a foreclosure sale and requires that bona fide tenants residing in the property receive at least 90 days-notice to vacate.

The PTFA also requires that an owner take ownership subject to any remaining term on a bona fide lease. Bona fide tenants are permitted to remain until the end of their lease term, except that a lease can be terminated on 90 days-notice if the owner will occupy the property. Thus, tenants with a month-to-month tenancy (no lease) or who have a lease that can be terminated at will, as well as tenants whose property is sold to a purchaser who will occupy the property, all must receive a minimum of 90 days-notice before having to move. Tenants with U.S. Department of Housing and Urban Development Section 8 vouchers have additional protections that permit them to retain their Section 8 lease and require the owner to assume the housing assistance payment contract associated with the lease.

The protections afforded by the PTFA do not apply to all foreclosures with tenancies in place. PTFA protections only apply to tenants under a “bona fide” lease or tenancy. A lease or tenancy is “bona fide” if: the tenant is not the mortgagor or a child, spouse, or parent of the mortgagor; it is the result of an arms-length transaction; and the rent payment is not substantially less than fair market rent or is reduced due to a government subsidy.

The PTFA also only applies to a foreclosure involving a dwelling, residential real property, or a federally related mortgage, including any loan (excluding temporary financing) secured by a lien on one-to-four family residential real property, including individual units of condominiums and cooperatives.² Additionally, a bona fide lease must have been entered into prior to the date of the notice of foreclosure.³ The PTFA does not apply to tenants being evicted from a non-foreclosed property, tenants who enter into lease agreements after the notice of foreclosure, or homeowners in foreclosure.

The PTFA does not preempt state laws if those laws afford tenants greater protections than the federal Act. Virginia law does not provide tenants with protections that exceed those found in the PTFA, thus, the PTFA protections must be met.

¹ Title VII of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111-22; 12 U.S.C. §§ 5201 *et seq.*).

² Section 3 of the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533; 12 U.S.C. § 2602).

³ “Notice of foreclosure” is the date on which complete title to a property is transferred to a successor as a result of a court order or pursuant to a mortgage, deed of trust, or security deed (Section 1484 of Dodd-Frank (Pub. L. 111-203; 12 U.S.C. § 5301)).

Another consumer protection that was reinstated by the Regulatory Relief Act relates to the Servicemembers Civil Relief Act (“SCRA”).⁴ The SCRA was enacted in 2003 with the purpose of easing the financial burdens on servicemembers and providing for the temporary suspension of legal proceedings and transactions that could adversely affect the rights of servicemembers during their military service.⁵ It grants protections pertaining to the sale, foreclosure, or seizure of certain real or personal property. The SCRA applies to any civil judicial or administrative proceeding commenced in any court or agency in the U.S., any state, and all U.S. territories.

Upon enactment, the Regulatory Relief Act extended several SCRA protections that had previously expired.⁶ Real or personal property owned by a servicemember before his or her military service that secures a mortgage, deed of trust, or similar security interest cannot be sold, foreclosed upon, or seized based on a breach of the obligation during the period of active military service or one year thereafter without a court order. In an action filed by a creditor against a servicemember (or spouse or dependent thereof) to enforce certain secured debts during or within one year after active military service, a court may, after a hearing on its own, or shall, upon application by a servicemember, stay a proceeding or adjust the debt.

For more information about this article or other legal banking issues, contact DeMarion Johnston, VBA General Counsel, at djohnston@vabankers.org or (804) 819-4714. This article has been prepared for informational purposes only and is not legal advice.

⁴ Servicemembers Civil Relief Act (Pub. L. 108-189; 50 U.S.C. §§ 3901 *et seq.*).

⁵ “Servicemember” is defined in 50 U.S.C. §§ 3911(1) and (2) and 50 U.S.C. 3952.

⁶ Section 313 of the Regulatory Relief Act struck §§ 710(d)(1) and (3) of the Honoring America’s Veterans and Caring for Camp Lejeune Families Act of 2012 (Pub. L. 112–154; 50 U.S.C. §§ 3953 *et seq.*).